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16 Attorneys for Defendants
17 Easton Diamond Sports, LLC and
18 Rawlings Sporting Goods Company,
19 Inc.

20 Monsta Athletics, LLC, a California
21 Limited Liability Company,

22 Plaintiff,

23 v.

24 Easton Diamond Sports, LLC, a
25 Delaware Limited Liability Corporation,
26 Rawlings Sporting Goods Company,
27 Inc., a Delaware Corporation,

28 Defendants

CASE NO. 5:23-cv-00963-JWH
(KK)

**JOINT RULE 26(F) REPORT
FOR SCHEDULING
CONFERENCE**

Complaint Filed: 5/26/2023

29 Plaintiff Monsta Athletics LLC (“Monsta”), by and through its undersigned
30 counsel, and Defendants Easton Diamond Sports, LLC (Easton”) and Rawlings
31 Sporting Goods Company, Inc. (“Rawlings”) (collectively, “Defendants”), by and
32

1 through their undersigned counsel, hereby submit the parties' Joint Rule 26(f)
2 Report.
3

4 **STATEMENT OF THE CASE**

5 This is an action for false marking regarding U.S. Patent No. 6,997,826 (the
6 "826 Patent"). Easton is the owner by assignment of the '826 Patent. Easton and
7 Rawlings utilize their websites to identify products embodying the '826 Patent.

8 Monsta filed a Complaint for false marking pursuant to 35 U.S.C. § 292.
9 Monsta contends that Easton and Rawlings have falsely marked Easton bat models
10 as embodying the '826 Patent and that the false marking has injured Monsta.

11 Defendants deny that any false marking has occurred. Defendants have filed
12 a motion to dismiss the Complaint under Rules 12(b)(1) and 12(b)(6) on the
13 grounds that Monsta has failed to plead that it suffered a competitive injury as a
14 result of the alleged false marking and has failed to plead with sufficient
15 particularity facts demonstrating that Easton and Rawlings acted with the requisite
16 intent to deceive the public. Defendants have not filed an Answer to the Complaint.
17

18 **SUBJECT MATTER JURISDICTION**

19 Monsta contends that this Court has jurisdiction over Monsta's Claim
20 pursuant to 28 U.S.C. §§ 1338(a), 1367, 2201, and 2202. Defendants contend that
21 the Court lacks jurisdiction over the subject matter for the reasons set forth in their
22 pending Motion to Dismiss.
23

24 **LEGAL ISSUES**

25 **Monsta's Statement:** Easton is the assignee and owner of the '826 Patent.
26 Easton and Rawlings identify over one hundred bat models as embodying the '826
27 Patent on their websites. For a bat to be properly marked with the '826 patent
28 number, it must literally embody each and every properly construed claim

1 limitation of at least one claim of the '826 Patent. Monsta contends that when the
2 claim limitations of the '826 Patent are properly construed, no Easton (or Rawlings)
3 bat literally embodies any claim of the '826 Patent. Monsta further contends that
4 Easton and Rawlings falsely marked bats as embodying the '826 patent without
5 properly construing the claims thereof, with an intent to deceive the public and
6 injure Monsta and in order to support the domestic industry requirement of the ITC
7 action, *In the Matter of Certain Composite Baseball and Softball Bats and*
8 *Components Thereof*, Inv. No. 337-TA-1283 (the “ITC action”), concerning the
9 '826 patent.

10 **Defendants’ Statement:** Defendants deny that they have falsely marked any
11 bats and further assert that Monsta has failed to state a claim upon which relief can
12 be granted. Monsta will not be able to prove that Easton or Rawlings has marked
13 any unpatented article, that Easton or Rawlings acted with the requisite intent to
14 deceive the public, or that Monsta suffered a competitive injury, as required under
15 35 U.S.C. § 292. Monsta’s claim-construction position is not supported by the
16 prosecution history or the law of estoppel. Under any reasonable construction, the
17 bats listed on Easton’s and Rawlings’ websites satisfy the limitations of at least one
18 claim of the '826 patent. Easton and Rawlings had no intent to deceive the public
19 (or anyone else), and Monsta has not pled and cannot demonstrate any competitive
20 injury caused by the alleged false marking.

21

22 **PARTIES, EVIDENCE, ETC.**

23 **Plaintiff’s Statement**

24 Monsta Athletics, LLC (“Monsta”), is a California Limited Liability
25 Company having a principal place of business at 1090 5th street, Suite 115,
26 Calimesa, California 92223. Monsta’s primary witness is Carl Pognatori the
27 managing member and majority owner of Monsta Athletics, LLC. Monsta
28 anticipates that the following additional fact witnesses will be called to testify at

1 deposition and/or trial: Terrance Sutherland; Stephen Fitzgerald; Frederic St.
2 Laurent; William B. Gianetti; Daniel Russell; David French, Miltond LLP; a
3 designated witness from the “external laboratory specializing in collision
4 dynamics” identified in the patent-in-suit; Matthew Vacek and George Griffith.

5 Monsta anticipates that the key documents will include the ’826 Patent and
6 its file history in patent application serial no. 10/382,242. Monsta further
7 anticipates that the following prior-art documents and things may be significant to
8 the proper construction of the claims of the ’826 Patent: US Application Serial Nos.
9 10/844,476 and publication US2004/0209716; the Miken ULTRA composite bat
10 introduced in 2002 which included two integrally formed carbon composite sleeves
11 separated by a releasing layer of polypropylene; U.S. Patent Nos.: 5,415,398;
12 6,042,493; 6251,034; 6,398,675; 6,425,836; 6,761,653; 6,764,419; 7,229,370 and
13 Japanese publication JP2001-054605.

14 Monsta identifies the following general categories of documents and
15 information it intends to submit or seek in this action. Monsta reserves the right to
16 rely on any admissible evidence, whether identified below or not, at any hearing in
17 this action.

- 18 • Documents, reports, and testimony regarding the ITC investigation
19 filed by Easton;
- 20 • Documents, expert reports, and testimony regarding Easton’s and
21 Rawlings’ and their predecessors in interest actions relating to the patent-in-suit;
- 22 • Documents, expert reports, and testimony regarding the proper claim
23 construction of the patent-in-suit;
- 24 • Documents, expert reports, and testimony regarding the design,
25 manufacture, structure, and marking of the bat products identified as embodying the
26 patent-in-suit.

27
28

1 • Documents, expert reports, and testimony regarding Easton and
2 Rawlings' decision to modify their websites to identify bats as embodying the
3 patent-in-suit in advance of filing the ITC action.

4 • Documents, expert reports, and testimony regarding the quantification
5 of damages to be awarded to Monsta.

6 Based on information reasonably available at this early stage of the action,
7 Monsta identifies the following issues to be litigated.

8 (a) The proper construction of the claims of the patent-in-suit;
9 (b) Whether the Bat Products identified on the Easton and Rawlings
10 websites marking of the patent-in-suit literally embody any claim thereof as
11 properly construed;

12 (c) Whether Easton and Rawlings have falsely marked bats as embodying
13 the patent-in-suit; and

14 (d) Damages to be awarded for Easton's and Rawlings' false marking.

15 **Defendants' Statements**

16 Easton Diamond Sports, LLC ("Easton"), is a Delaware Limited Liability
17 Company having an address of 3500 Willow Lane, Thousand Oaks, California
18 91361. Rawlings Parent, Inc. and Rawlings Sporting Goods Company, Inc. are
19 corporate parents to Easton.

20 Rawlings Sporting Goods Company, Inc. ("Rawlings"), is a Delaware
21 corporation having an address at 510 Maryville University Drive, Suite 110, Saint
22 Louis, MO 63141, and a subsidiary having an address of 3500 Willow Lane,
23 Thousand Oaks, California 91361. Rawlings is 100% owned by Rawlings Parent,
24 Inc., and Rawlings Parent, Inc. is owned by Seidler Equity Partners, Major League
25 Baseball, and BCE Acquisition US, Inc. (BCE Acquisition US, Inc. is owned by
26 Fairfax Financial Holdings Limited and Power Corporation of Canada).

27 Defendants identify the following potential fact witnesses: Carl Pognatori,
28 Frederic St. Laurent, and William Terrance Sutherland. Defendants will identify

1 their expert witness(es) at the time required by the Federal Rules or the Court's
2 scheduling order.

3 In addition to the categories identified above by Plaintiff, Defendants identify
4 the following general categories of documents and information they intend to
5 submit or seek in this action:

- 6 • Documents, expert reports, and testimony regarding the configuration of
7 the accused bats;
- 8 • Documents, expert reports, and testimony regarding the '826 patent, the
9 prosecution of the patent, and the proper construction of the claims of the
10 patent;
- 11 • Documents, expert reports, and testimony regarding Defendants' patent
12 marking websites and Defendants' decisions to modify their websites;
- 13 • Documents, expert reports, and testimony regarding the market and
14 competition therein;
- 15 • Documents, expert reports, and testimony regarding Plaintiff's claim of
16 competitive injury; and
- 17 • Documents, expert reports, and testimony regarding Plaintiff's alleged
18 damages (or lack thereof).

19 The issues are not yet fully developed, and Defendants' investigation is
20 ongoing. Accordingly, Defendants reserve the right to identify additional
21 individuals and/or key documents at a later date. Further, Defendants reserve the
22 right to rely on any admissible evidence, whether identified above or not, at any
23 hearing in this action.

24

25 **DAMAGES**

26 Monsta seeks damages for Easton's and Rawlings' alleged false marking of
27 bats on the Easton and Rawlings websites, including but not limited to fees and
28 costs in excess of \$500,000 incurred to defend the ITC action that could only have

1 been maintained by virtue of the false marking of products to satisfy the domestic-
2 industry requirement, and other damages to Monsta from lost sales, lost profits and
3 injury to reputation to be determined through discovery and expert testimony.

4 Defendants deny that Monsta is entitled to any damages or other relief, and
5 deny that the relief requested by Monsta is recoverable under the relevant law.
6 Defendants intend to seek at least attorneys' fees, expenses, and costs.

7

8 INSURANCE

9 Defendants are in the process of determining whether there is any insurance
10 coverage for the false marking claim in this action.

11

12 MOTIONS

13 After a claim-construction determination, Monsta anticipates filing a Motion
14 for Summary Judgment on the false-marking claim.

15 In the event the Court does not grant Defendants' motion to dismiss with
16 prejudice, Defendants anticipate filing an additional Motion to Dismiss, if
17 warranted, and/or a Motion for Summary Judgment.

18

19 MANUAL FOR COMPLEX LITIGATION

20 It is not anticipated that these procedures will be needed.

21

22 STATUS OF DISCOVERY

23 Discovery commenced after completion of the parties' Rule 26(f) conference
24 on July 28, 2023.

25

26 DISCOVERY PLAN

27 The parties anticipate that the scope of discovery will cover the factual and
28 legal issues identified above. The parties reserve the right to obtain discovery on

any matters relevant to the asserted claims, counterclaims, and/or defenses.
Discovery will include mandatory Rule 26 disclosures, written discovery,
depositions, and potentially third-party discovery. The parties do not believe
discovery should be bifurcated or conducted in phases.

The parties do not anticipate issues to arise regarding the disclosure,
discovery, or preservation of electronically stored information (“ESI”). The parties
intend to cooperate to ensure the proper and efficient production of ESI in this case.

Disclosures

The parties propose that no changes be made to the form or requirement for
making initial disclosures under Rule 26(a)(1). The parties will exchange initial
disclosures on August 11, 2023.

Written Discovery

The parties plan to serve Requests for Production, Interrogatories, and/or
Requests for Admission and may serve additional written discovery within the
limits of the Federal Rules. The parties agree that any motions challenging the
adequacy of discovery responses shall be filed timely, served, and calendared
sufficiently in advance of the discovery cut-off date to permit the revised responses
to be obtained before that date, if the motion is granted.

Depositions

The parties plan to take at least Rule 30(b)(6) depositions of the other party
as well as depositions of any other witnesses with relevant information, the
identities of whom are not yet known. Depositions shall take place in advance of
the discovery cut-off date and after the parties complete written discovery necessary
to conduct such depositions.

Protective Order

To the extent that discovery in this matter will require the production of
documents containing confidential, proprietary, private, and/or sensitive
information, the parties agree to stipulate to entry of a Protective Order.

1 **Proposed Limits or Modifications of Discovery Rules**

2 Except as expressly stated below, the parties agree that discovery is subject
3 to the limitations set forth in the Federal Rules of Civil Procedure and Local Rules
4 of this Court, as well as the Protective Order to be entered in this action. If a party
5 requests modification of any of the discovery limitations set forth below, the parties
6 agree to meet and confer in good faith in an attempt to resolve the issue without
7 Court intervention. If the parties are unable to reach agreement, a party may seek
8 leave from the Court for additional discovery.

- 9 • **Requests for Production.** The parties agree that there is no presumptive
10 limit on the number of requests for production that each side may serve,
11 consistent with the Federal Rules of Civil Procedure.
- 12 • **Interrogatories.** The parties agree that each side may serve up to 25
13 interrogatories, consistent with the Federal Rules of Civil Procedure.
- 14 • **Requests for Admission.** The parties agree that each side may serve up
15 to 50 requests for admission. This limit does not apply to requests
16 dedicated solely to the authenticity of documents.
- 17 • **Fact Depositions.** The parties agree that all fact depositions, including
18 Rule 30(b)(6) depositions, will be limited to no more than seven hours on
19 the record. For clarity, this limit does not apply to Rule 30(b)(6)
20 depositions when multiple witnesses are designated pursuant to a single
21 Rule 30(b)(6) deposition notice (e.g., if two witnesses are designated in
22 response to a single Rule 30(b)(6) deposition notice, each witness will be
23 made available for seven hours of deposition). The parties agree that each
24 side shall be limited to a total of ten depositions of party witnesses,
25 consistent with Federal Rule of Civil Procedure 30(a)(2)(A).
- 26 • **Expert Depositions.** The parties agree that an expert witness may be
27 deposed for up to seven hours for each expert report (excluding reply
28 expert reports in support of an opening expert report) that the expert

1 submits. If an expert submits multiple reports, the parties agree they will
2 use their best efforts to complete the expert's deposition in one day, and if
3 that is not possible, on consecutive days.

4 • **Email Service.** The parties consent to service by email and agree that
5 service of a document by email on counsel of record shall have the same
6 effect as service of the document by hand for purposes of computing any
7 responsive deadlines.

8
9 **DISCOVERY CUT-OFF**

10 The parties' respective proposals for the final day for completion of all
11 discovery, including hearings on all discovery motions, are provided in Exh. A.
12

13 **EXPERT DISCOVERY**

14 Expert Disclosure (Burden of Proof) (see Exh. A proposals)

15 Expert Disclosure (Rebuttal) (see Exh. A proposals)

16 Expert Discovery Cut-Off (see Exh. A proposals)

17
18 **SETTLEMENT CONFERENCE / ADR**

19 The parties have not yet entertained any settlement discussions. The parties
20 have agreed that they will conduct and conclude a private mediation no later than
21 forty-five (45) days before the Final Pretrial Conference.

22
23 **TRIAL ESTIMATE**

24 It is anticipated that both parties will request a jury trial. The parties
25 anticipate that trial will take 3-4 days.

26
27 **TRIAL COUNSEL**

1 **Plaintiff:** David Abel, Law Office of David B. Abel; Sevag Demirjian,
2 Foundation Law Group, LLP

3 **Defendants:** Rodger K. Carreyn, Joseph Hamilton, Gabrielle E. Bina, Kaitlin
4 Dryden, Perkins Coie LLP

5

6 **INDEPENDENT EXPERT OR MASTER**

7 The Parties do not believe an independent expert or master is warranted in
8 this case.

9

10 **SCHEDULE WORKSHEET**

11 The parties' proposed schedule worksheet is attached hereto.

12

13 **OTHER ISSUES**

14 The parties have discussed consolidating the claim-construction issues in this
15 action with the claim-construction issues in the copending *Easton Diamond Sports,*
16 *LLC v. Monsta Athletics, LLC*, 5:21-cv-01626-JWH-KK. The parties have not
17 agreed that the cases should be consolidated.

18

19 **CONSENT TO PROCEED BEFORE MAGISTRATE JUDGE**

20 The parties do not consent to the assignment of this matter to a Magistrate
21 Judge.

22

23

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28

1 Dated: August 4, 2023

By: /s/ David B. Abel
2 Attorneys for Plaintiff
3 Monsta Athletics, LLC

4 Dated: August 4, 2023

PERKINS COIE LLP

5 /s/ Rodger K. Carreyn
6 Rodger K. Carreyn

7 Attorneys for Defendants Easton
8 Diamond Sports, LLC, and Rawlings
9 Sporting Goods Company, Inc.

1 **EXHIBIT A: SCHEDULE OF PRETRIAL AND TRIAL DATES**

2 **WORKSHEET**

4	Case No.:	5:23-cv-00963-JWH (KK)			
5	Case Name:	Monsta Athletics, LLC, v. Easton Diamond Sports, LLC, et al.			
6	Event	Plaintiff's Request month/day/year	Defendant's Request month/day/year	Court's Order	
8	<input checked="" type="checkbox"/> Jury Trial or <input type="checkbox"/> Bench Trial (Monday at 9:00 a.m.) Length: 3-4 days	Sept. 16, 2024	Sept. 16, 2024		
11	Final Pretrial Conference [L.R. 16] (Friday—17 days before trial date)	Aug. 30, 2024	Aug. 30, 2024		
13	Hearing on Motions <i>in Limine</i> (Friday—7 days before Final PTC)	Aug. 23, 2024	Aug. 23, 2024		
16	Last Date to Hear Non-Discovery Motions	July 19, 2024	July 19, 2024		
17	Last Date to Conduct Settlement Conference	June 7, 2024	June 7, 2024		
19	All Discovery Cut-Off (including hearing all discovery motions)	July 12, 2024	May 10, 2024		
21	Expert Disclosure (Rebuttal)	May 3, 2024	Mar. 1, 2024		
22	Expert Disclosure (Initial)	April 19, 2024	Jan. 26, 2024		